

## **REMARKS**

The present application includes pending claims 1-23 and 24-35. The rejection of all of claims 1-23 and 25-35 under 35 U.S.C. §102(e) as being anticipated by McGowan (US 2003/0018745), as set forth in the Final Office Action of November 6, 2008 is maintained in the Advisory Action mailed January 15, 2009. Claims 1, 7, 9, 15, 17, 27, and 32 have been amended as shown above. Claim 1, 9, 17, and 27 are independent claims from which claims 2-8, claims 10-16, claims 18-23, 25, and 26, and claims 28-35 depend, respectively. The Applicants respectfully traverse the rejections for at least the reasons previously discussed during prosecution and the following.

### **Amendments to the Claims**

Applicants have amended claims 1, 7, 9, 15, 17, 27, and 32 as shown above. Support for the amendments to claims 1, 9, 17, and 27 may be found, for example, at Fig. 1C and paragraphs [0036] and [0037] of United States Provisional Patent Application Serial No. 60/478,286, entitled "Media Processing System Communicating Activity Information To Support User And User Base Profiling And Consumption Feedback" (Attorney Docket No. 15037US01 01041P-BP-2847), filed June 13, 2003, which was incorporated in the present Application in its entirety at the time of filing on September 30, 2003, and at paragraph [0045] of the Specification of the present Application. Applicants respectfully submit that no new matter has been added by these amendments.

Applicants have amended claims 7 and 15 to be consistent with the amendments to claims 1 and 9, respectively, from which they depend, and claim 32 to correct a noted

minor claim drafting error. Applicants respectfully submit that no new matter has been added by these amendments.

### **Rejections of Claims**

Claims 1-23 and 25-35 were rejected under 35 U.S.C. 102(e) as being anticipated by U.S. 2003/0018745 ("McGowan"). Applicants respectfully submit that the amendments to the claims render the rejections of the Office action of November 6, 2008 and Advisory Action of January 15, 2009 moot. Notwithstanding, Applicants offer the following remarks.

With regard to independent claim 1, Applicants have amended claim 1 to recite "[a] method supporting communication of activity information to enable media programming, the method comprising: receiving, at a user-designated monitoring system via a communication network, at least one notification of a user request for consumption of media, each of the at least one notification comprising user-selected parameter information related to the request and at least one user-defined parameter that indicates a type of allowable use of the at least one notification by the monitoring system; calculating at least one statistic, using the information related to the request; automatically selecting additional media for consumption by the user according to the at least one statistic; scheduling the selected additional media according to the at least one statistic, for consumption by the user via the communication network; and updating a user interface with the scheduled selected additional media." Applicants respectfully submit that McGowan does not teach each and every element of Applicants' claim 1.

For example, Applicants respectfully submit that Applicants' claim 1 now recites, in part, "...receiving, at a user-designated monitoring system via a communication network, at least one notification of a user request for consumption of media, each of the at least one notification comprising user-selected parameter information related to the request and at least one user-defined parameter that indicates a type of allowable use of the at least one notification by the monitoring system;...." Applicants respectfully submit that McGowan is silent with regard to a user having any control over with whom activity information is shared, or the allowable use of activity information by the recipient, as claimed. Therefore, McGowan does not teach or suggest at least this aspect of Applicants' amended claim 1.

In addition, Applicants amended claim 1 recites, in part, "...automatically selecting additional media for consumption by the user according to the at least one statistic;...." Applicants respectfully submit that McGowan does not teach or suggest the automatic selection of media. Instead, McGowan states, in part, at paragraph [0032], "...[t]he VCS operator, content provider, cable system, advertisers, or other key business partners are the entities that decide what a channel should be and how many channels there should be." Thus, McGowan teaches that it is the "VCS operator, content provider, cable system, advertisers, or other key business partners" that determined what a channel should be. McGowan further states, "...the new content provider may assemble representative programming for this channel, provide the content to a VCS operator,...." *Id.* McGowan also states "...A drag-and-drop methodology may conveniently enable lists of candidate programs to be generated and then individual programs selected for a given channel." *Id.* Clearly, use of a "drag and

drop methodology”, which is employed by a human operator, is not “automatic selection”, as claimed. McGowan states, at paragraph [0033], in part, “...The VCS additionally provides assistance in the selection process using artificial intelligence (AI) rules and recommendations.” (emphasis added) Applicants respectfully submit that “assistance” and “recommendations” do not teach or suggest “automatic selection”, as claimed. McGowan further states, “...Well-known clustering algorithms, including fuzzy clustering techniques, and pattern recognition routines are implemented to isolate key trends and findings. This data is converted into rules that assist or simply offer recommendation in the selection of content for each channel.” *Id.* Indeed, McGowan seems to summarize the capabilities of the “VCS” in this regard, stating, “...The AI interface additionally functions to suggest, but not control the process of content selection.” *Id.* Thus, Applicants respectfully submit that McGowan does not teach or suggest at least this additional aspect of Applicants’ amended claim 1.

Based at least upon the above, Applicants respectfully submit that McGowan does not teach or suggest each and every element of Applicants’ claim 1, that McGowan does not support a *prima facie* case of either anticipation or obviousness, that McGowan therefore does not render Applicants’ claim 1 unpatentable, and that claim 1 is allowable over McGowan. Further, because claims 2-8 depend from allowable claim 1, Applicants respectfully submit that claim 2-8 are allowable over McGowan as well, for at least the same reasons. Accordingly, Applicants respectfully request that the rejection of claims 1-8 under 35 U.S.C. §102(e) be reconsidered and withdrawn.

With regard to independent claim 9, Applicants respectfully submit that claim 9 has been amended to recite "...[a] method supporting communication of activity information to enable media programming, the method comprising: receiving, at a user-designated monitoring system via a communication network, at least one notification of a user request for consumption of media, each of the at least one notification comprising user-selected parameter information related to the request and at least one user-defined parameter that indicates a type of allowable use of the at least one notification by the monitoring system; calculating at least one statistic, using the information related to the request; automatically selecting additional media for consumption by the user according to the at least one statistic; scheduling the selected additional media according to the at least one statistic for consumption by the user; and communicating one or both of the selected additional media and/or the at least one statistic to a provider of the media, via the communication network." Applicants respectfully submit that claim 9 recite features similar in some respects to those of claim 1, and that McGowan does not teach, suggest, or otherwise render claim 9 unpatentable for many of the reasons set forth above with respect to claim 1. Accordingly, Applicants respectfully request that the rejection of claims 9-16 under 35 U.S.C. §102(e) be reconsidered and withdrawn.

With regard to claim 17, Applicants respectfully submit that claim 17 has been amended to recite "...[a] system supporting communication of activity information to enable media programming, the system comprising: a television display; a storage for storing media, the storage having an associated network address; a user interface

accessible via the television display, the user interface supporting the selection of media for consumption and the setting of at least one user-definable parameter that controls sharing of media consumption activity information; set top box circuitry communicatively coupling the storage to a communication network to support consumption of the selected media; and server software that receives, via the communication network, a notification comprising at least one of the associated network address and information related to the media selected for consumption by the user, and responds by calculating at least one statistic, automatically selecting additional media for consumption by the user according to the at least one statistic, and scheduling availability of the selected additional media according to the at least one statistic." Initially, Applicants respectfully submit that claim 17 is allowable for many of the reasons set forth above with respect to claim 1. In addition, Applicants respectfully submit that McGowan does not provide sufficient support for a *prima facie* case of either anticipation or obviousness in that McGowan does not teach all of the elements of Applicants' claim 17.

For example, Applicants respectfully submit that McGowan does not teach or suggest Applicants' feature "...a user interface accessible via the television display, the user interface supporting the selection of media for consumption and the setting of at least one user-definable parameter that controls sharing of media consumption activity information;...", as claimed. Applicants respectfully submit that McGowan is silent with respect to at least, user control of sharing of activity information, as claimed. Therefore, Applicants respectfully submit that claim 17 is additionally allowable over McGowan for at least this reason.

Applicants respectfully submit that McGowan does not support a *prima facie* case of either obviousness or anticipation, in that McGowan does not teach all of the elements of Applicants' claim 17. Applicants respectfully submit that McGowan does not render claim 17 unpatentable for at least the reasons set forth above, that claim 17 is allowable over McGowan, and that claims 18-23, 25, and 26 that depend from allowable claim 17 are, therefore, also allowable over McGowan for at least the same reasons. Accordingly, Applicants respectfully request that the rejection of claims 17-23, 25, and 26 under 35 U.S.C. §102(e) be reconsidered and withdrawn.

With regard to independent claim 27, Applicants respectfully note that claim 27 has been amended so that it now recites "...[a] system supporting communication of activity information to enable media programming, the system comprising: set top box circuitry communicatively coupled to a communication network to support consumption of media, the set top box circuitry operable to display a user interface that enables user selection of media for consumption and setting of at least one user-definable parameter that controls sharing of media consumption activity information via the communication network; and software that receives, via the communication network, a notification of a user request for consumption of media, wherein the notification comprises information related to the request, wherein the software also calculates a statistic using the information related to the request, automatically selects additional media for consumption by the user according to the statistic, and schedules availability of the selected additional media according to the statistic." Applicants respectfully submit that

claim 27 is allowable over McGowan, in that McGowan does not teach each and every aspect of Applicants' claim 27.

For example, McGowan fails to teach or suggest, at least, "...set top box circuitry communicatively coupled to a communication network to support consumption of media, the set top box circuitry operable to display a user interface that enables user selection of media for consumption and setting of at least one user-definable parameter that controls sharing of media consumption activity information via the communication network;...." Applicants respectfully submit that McGowan is silent with regard to a user having any control over what activity information related to the consumption of media is shared, as claimed. Therefore, McGowan does not teach or suggest at least this aspect of Applicants' amended claim 27.

In addition, Applicants respectfully submit that McGowan does not teach, suggest, or otherwise render unpatentable Applicants' feature "...wherein the software also calculates a statistic using the information related to the request, automatically selects additional media for consumption by the user according to the statistic, and schedules availability of the selected additional media according to the statistic." Applicants have shown above that McGowan also does not render this aspect of Applicants' claim 27 unpatentable.

With regard to claim 33, Applicants respectfully submit that claim 33 recites "[t]he system of claim 27 wherein the software performs the scheduling of the availability of media on a periodic basis." The Office asserts at page 12 of the Office action of November 6, 2008 that "...McGowan discloses "the method of claim 27 wherein one or



more of the calculating, identifying, scheduling, and/or updating is performed on a periodic basis" ([0022], [0026], [0047]).' Applicants respectfully submit that claim 33 is a system claim, that the Office is rejecting a method claim, and that the rejected claim language does not match the language of Applicants' claim 33. Therefore, the Office has failed to establish a *prima facie* case of anticipation with respect to claim 33, and that claim 33 is independently allowable over McGowan.

Therefore, Applicants respectfully submit that claim 27 is allowable over McGowan, for at least the reasons set forth above. In addition, because claims 28-35 depend from claim 27, Applicants respectfully submit that claims 28-35 are also allowable over McGowan, for at least the same reasons. Accordingly, Applicants respectfully request that the rejection of claims 27-35 under 35 U.S.C. §102(e) be reconsidered and withdrawn.

### **Conclusion**

In general, the Office Action makes various statements regarding the pending claims and the cited references that are now moot in light of the above. Thus, the Applicants will not address such statements at the present time. However, the Applicants expressly reserve the right to challenge such statements in the future should the need arise (e.g., if such statement should become relevant by appearing in a rejection of any current or future claim).

The Applicants respectfully request reconsideration and allowance of claims 1-23 and 25-35 for at least the reasons discussed above. If the Examiner has any questions or the Applicants can be of any assistance, the Examiner is invited to contact the undersigned.

The Commissioner is authorized to charge any necessary fees or credit any overpayment to the Deposit Account of McAndrews, Held & Malloy, Account No. 13-0017.

Respectfully submitted,

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